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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,233	05/07/2007	Malin Ernebrant	02508.0110	9327
22852	7590	06/13/2011	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			FISHER, ABIGAIL L	
			ART UNIT	PAPER NUMBER
			1616	
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			06/13/2011 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/591,233

Applicant(s)

ERNEBRANT ET AL.

Examiner

ABIGAIL FISHER

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
 NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 1/21/11

13. ☐ Other: _____.

/Johann R. Richter/
 Supervisory Patent Examiner, Art Unit 1616

6/9/11

Continuation of 11. does NOT place the application in condition for allowance because: The rejections are maintained for the reasons set forth in the Final Office action. Applicants argue that it the examiner has not shown why it would have been obvious when Zander and Duponchelle are considered as a whole to manipulate the pH of the alkaline solution to the claimed pH of 10.1 to 10.5. The examiner disagrees. The reasons for this manipulation are clearly set in in pages 6-7 of the final Office action. Specifically, based on the teachings of Zander and Duponchelle et al. it would have been obvious to one of ordinary skill in the art to manipulate the pH in order to produce a more stable bicarbonate solution that does not need the use of special equipment to keep the carbon dioxide concentration constant while maintaining the partial pressure of the carbon dioxide to that is of the same magnitude as the atmosphere. Applicants argue that it is the particular proportion of bicarbonate/carbonate in the first single solution that allows it to be in equilibrium with the partial pressure of carbon dioxide in the atmosphere and Zander fails to recognize that it is the specific proportions of carbonate/bicarbonate that causes this equilibrium. This argument is not persuasive, while the claims do recite the equilibrium of partial pressure, the claims do not require any specific proportions. Zander recognizes the desire to have the magnitude of the carbon dioxide of the solution match that of the atmosphere. Therefore, manipulation to achieve this matching would have been obvious. Applicants argue that the ratio of bicarbonate to carbonate taught by Zander would not be expected to be in equilibrium with the partial pressure of atmospheric carbon dioxide. However, applicants have not shown this to be true. "The arguments of counsel cannot take the place of evidence in the record." *In re Schulze*, 346 F.2d 600, 145 USPQ 716, 718 (CCPA 1965), *In re Huang*, 40 USPQ 2d 1685 (Fed. Cir. 1996), *In re De Blauwe et al.*, 222 USPQ 191, (Fed. Cir. 1984). Applicant has not provided any factual evidence establishing unobviousness. Since Zander teaches this matching of the carbon dioxide pressure, manipulation is still obvious. Applicants argue that the examiner's contention that Zander would be expected to have the same stability as instantly claimed is baseless. The examiner disagrees. Firstly it is noted that neither stability nor time before mixing of the two solutions is claimed. Secondly, the reason the examiner has stated that there is a reasonable expectation the stability would be the same or similar is because applicants have stated this stability is due to the partial pressure of carbon dioxide which is taught by Zander. Applicants argue that the stability due to the partial pressure could not have been predicted. The examiner disagrees. Zander teaches that instability of these types of solutions is due to the escape of carbon dioxide. Zander teaches liquids which have a carbon dioxide partial pressure which corresponds to that of atmospheric air do not change their overall carbon dioxide content which makes them more stable. Therefore, demonstration of this statement does not make the results unpredictable. It is for at least these reasons the rejections are maintained for the reasons set forth in the Final Office action.